

The Honorable James L. Robart

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

DEEP9 CORPORATION

Plaintiff,

V.

BARNES & NOBLE, INC. and  
BARNESANDNOBLE.COM LLC.

## Defendants.

CASE NO. 2:11-CV-00035-JLR

## **DEFENDANTS' MOTION FOR COSTS**

**NOTED FOR: NOVEMBER 2, 2012**

## **CLERK'S ACTION REQUIRED**

Costs To Be Taxed: \$45,271.26

On September 21, 2012, the Court entered judgment in favor of Defendants Barnes & Noble, Inc. and barnesandnoble.com llc (collectively, “Barnes & Noble”) and against Plaintiff Deep9 Corporation (“Deep9”). (*See* Dkt. No. 277.) Barnes & Noble now submits this Motion for Costs pursuant to CR 54(d) and 28 U.S.C. § 1920. The detailed costs are set forth below.

The costs itemized below constitute taxable costs that were reasonably and necessarily incurred by Barnes & Noble in this case. The Declaration of Charles A. Basinger in support of these costs is attached hereto as Appendix A. Exhibits 2-4 to that declaration contain true and correct copies of the invoices substantiating these costs.

## **DEFENDANTS' ITEMIZED COSTS**

**A. Fees For Printed or Electronically Recorded Transcripts**

(i) Deposition Transcripts

The below table lists the deposition transcripts that were necessarily obtained by Barnes & Noble for use in this litigation and are properly recoverable under 28 U.S.C. § 1920(2). (See Basinger Decl. at ¶ 4.)

| Date/Invoice #           | Deponent                    | Transcript            | Vendor                     | Invoice Total |
|--------------------------|-----------------------------|-----------------------|----------------------------|---------------|
| Apr. 23, 2012<br>424793  | Sudeep Narain               | Transcript with Video | Barkley Court Reporters    | \$ 1,489.40   |
| Apr. 26, 2012<br>425330  | Ravi Gopalakrishnan         | Transcript with Video | Barkley Court Reporters    | \$ 1,304.00   |
| Apr. 26, 2012<br>23648-2 | Chris Winberry              | Transcript with Video | Greenhouse Reporting, Inc. | \$ 1,109.33   |
| May 18, 2012<br>1001980  | David Campbell (Vol. 1)     | Transcript with Video | Aptus Court Reporting      | \$ 4,942.88   |
| May 18, 2012<br>1001982  | David Campbell (Vol. 2)     | Transcript with Video | Aptus Court Reporting      | \$ 2,029.53   |
| May 23, 2012<br>426851   | Ranju Das                   | Transcript with Video | Barkley Court Reporters    | \$ 1,934.64   |
| Jun. 4, 2012<br>23671-3  | John McDermott              | Transcript with Video | Greenhouse Reporting, Inc. | \$ 2,057.30   |
| Jul. 3, 2012<br>23752-3  | Mark Gallagher              | Transcript with Video | Greenhouse Reporting, Inc. | \$ 1,143.19   |
| Jul. 6, 2012<br>23751-3  | Dr. Benjamin Goldberg       | Transcript with Video | Greenhouse Reporting, Inc. | \$ 782.13     |
| Jul. 16, 2012<br>1002323 | David Campbell (Vol. 3)     | Transcript with Video | Aptus Court Reporting      | \$ 1,251.64   |
| Jul. 20, 2012<br>1002353 | Russell W. Mangum III, Ph.D | Transcript with Video | Aptus Court Reporting      | \$ 3,890.36   |
| Jul. 20, 2012<br>1002434 | Stephen Gray                | Transcript with Video | Aptus Court Reporting      | \$ 6,136.45   |

#### (ii) Hearing Transcripts

The transcript of the summary judgment hearing was also necessarily obtained by Barnes & Noble for use in this litigation and is properly recoverable under 28 U.S.C. § 1920(2). (*See id.* at ¶ 6.)

| <b>Proceeding</b>           | <b>Transcript</b>        | <b>Invoice Total</b> |
|-----------------------------|--------------------------|----------------------|
| Summary Judgment<br>Hearing | Electronic<br>Transcript | \$ 268.25            |

**B. Fees for Exemplification and the Costs of Making Copies of any Necessary Materials**

The photocopying costs shown below were incurred by Barnes & Noble and are properly recoverable under 28 U.S.C. § 1920(4). (*See id.* at ¶ 4.)

| <b>Invoice Date</b> | <b>Description</b> | <b>Invoice Total</b>      |
|---------------------|--------------------|---------------------------|
| May 18, 2012        | Photocopies        | \$ 4,540.60               |
| Jun. 27, 2012       | Photocopies        | \$ 426.25                 |
| Jul. 27, 2012       | Photocopies        | \$ 4,665.21               |
| Aug. 29, 2012       | Photocopies        | \$ 2,800.10               |
|                     |                    | <b>Total: \$12,432.16</b> |

Fees for professional graphics support are also recoverable under 28 U.S.C. § 1920(4). Barnes & Noble necessarily incurred the below cost for graphics support at the summary judgment hearing on September 21, 2012. (*See id.* at ¶ 5.)

| <b>Entity</b>        | <b>Proceedings</b>       | <b>Invoice Total</b> |
|----------------------|--------------------------|----------------------|
| Resonant Legal Media | Summary Judgment Hearing | \$ 4,500.00          |

## CONCLUSION

Barnes & Noble respectfully requests that the Court grant costs in the amount of \$45,271.26, as summarized below.

| Description                                                        | Cost                |
|--------------------------------------------------------------------|---------------------|
| Printed and electronically recorded transcripts – depositions      | \$ 28,070.85        |
| Printed and electronically recorded transcripts – hearing          | \$ 268.25           |
| Fees for exemplification and copies – photocopies                  | \$ 12,432.16        |
| Printed and electronically recorded transcripts – graphics support | \$ 4,500.00         |
| <b>Total</b>                                                       | <b>\$ 45,271.26</b> |

8 DATED: October 12, 2012

9  
10 QUINN EMANUEL URQUHART &  
SULLIVAN, LLP  
11 Attorneys for Defendants12 By s/*David Eiseman*  
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San Francisco, California 94111-4788  
Telephone: (415) 875 6600  
E-mail: [davideiseman@quinnmanuel.com](mailto:davideiseman@quinnmanuel.com)15 Jeffrey S. Gerchick (Pro Hac Vice)  
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18 Washington, D.C. 20004  
Telephone: (202) 538-8000  
19 E-mail: [jeffgerchick@quinnmanuel.com](mailto:jeffgerchick@quinnmanuel.com)  
[charlesbasinger@quinnmanuel.com](mailto:charlesbasinger@quinnmanuel.com)20  
21 Kenyon & Kenyon  
Attorneys for Defendants22 Richard L. DeLucia (Pro Hac Vice)  
23 A. Antony Pfeffer (Pro Hac Vice)  
24 Vincent Rubino (Pro Hac Vice)  
One Broadway  
25 New York, New York 10004  
Telephone: (212) 425-7200  
26 E-mail: [rdelucia@kenyon.com](mailto:rdelucia@kenyon.com)  
[apfeffer@kenyon.com](mailto:apfeffer@kenyon.com)  
[vrubino@kenyon.com](mailto:vrubino@kenyon.com)

1  
2 Davis Wright Tremaine LLP  
3 Attorneys for Defendants  
4  
5

6 Marvin L. Gray, Jr., WSBA #5161  
7 Cassandra L. Kennan, WSBA #22845  
8 1201 Third Avenue, Suite 2200  
9 Seattle, Washington 98101-3045  
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11 Fax: (206) 757-7700  
12 E-mail: montygray@dwt.com  
13 cassandrakennan@dwt.com  
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## **CERTIFICATE OF SERVICE**

I hereby certify that on October 12, 2012, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notifications of such filing to all counsel of record.

Dated this 12<sup>th</sup> day of October, 2012.

By /s/ David Eiseman

# APPENDIX A

## The Honorable James L. Robart

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

DEEP9 CORPORATION,

Plaintiff,

v.

BARNES & NOBLE, INC. and  
BARNESANDNOBLE.COM LLC,

#### Defendants.

CASE NO. 2:11-CV-00035-JLR

**DECLARATION OF CHARLES A.  
BASINGER IN SUPPORT OF  
DEFENDANTS' MOTION FOR COSTS**

I, Charles A. Basinger, do declare as follows:

1. I am an attorney admitted to practice in the District of Columbia, and I am a member of the law firm of Quinn Emanuel Urquhart & Sullivan, LLP. I represent defendants Barnes & Noble, Inc. and barnesandnoble.com llc in this action.

2. I have knowledge of the matters set forth in this Declaration based on my personal involvement and investigation into the subject matter set forth in the attached exhibits. The items reflected in Defendants' Motion for Costs are supported by the exhibits and invoices attached hereto.

3. On September 21, 2012, Judgment was entered in favor of Defendants and against Plaintiff Deep9 Inc. A true and correct copy of the Judgment is attached hereto as Exhibit 1.

4. Attached hereto as Exhibit 2 are true and correct copies of redacted excerpts of voices reflecting (1) the costs of printed and electronically recorded deposition transcripts, the costs of photocopies.

5. Attached hereto as Exhibit 3 is a true and correct copy of the invoice reflecting costs for professional graphics support for the summary judgment hearing.

6. Attached hereto as Exhibit 4 is a true and correct copy of the invoice reflecting  
cost for the transcript of the summary judgment hearing.

I declare under penalty of perjury that the foregoing costs are correct and were  
necessarily incurred in this action and that the services for which fees have been charged were  
properly and necessarily performed.

Executed on October 12, 2012 in Washington, D.C.

Clark A. Basinger

Charles A. Basinger

## **CERTIFICATE OF SERVICE**

I hereby certify that on October 12, 2012, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notifications of such filing to all counsel of record.

Dated this 12<sup>th</sup> day of October, 2012.

By /s/ David Eiseman

# **EXHIBIT 1**

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

DEEP9 CORPORATION,

Plaintiff,

v.

BARNES & NOBLE, INC., et al.,

Defendants.

JUDGMENT IN A CIVIL CASE

CASE NO. C11-0035JLR

- Jury Verdict.** This action came before the court for a trial by jury. The issues have been tried and the jury has rendered its verdict.
- Decision by Court.** This action came to consideration before the court. The issues have been considered and a decision has been rendered.

The court grants summary judgment in favor of Defendants Barnes & Noble, Inc. and barnesandnoble.com, LLC.

Filed this 21st day of September, 2012.

WILLIAM M. MCCOOL  
Clerk of Court

s/Mary Duett  
Deputy Clerk

# **EXHIBIT 2**

**Kenyon & Kenyon LLP**  
ONE BROADWAY  
NEW YORK, N.Y. 10004  
Tel. 212-425-7200  
I.D. 13-5607139

**URGENT MAY 30 2012**

Barnes & Noble, Inc.  
122 Fifth Avenue  
New York, NY 10011

May 18, 2012

Invoice # 860429

Attn: General Counsel

*For professional services and disbursements from April 1, 2012 through April 30, 2012.*

**Total This Invoice**

Make Checks Payable to: Kenyon & Kenyon LLP

or

Barnes & Noble, Inc.  
122 Fifth Avenue  
New York, NY 10011

Attn: General Counsel

**KENYON & KENYON LLP**  
One Broadway  
New York, N.Y. 10004  
I.D. 13-5607139

May 18, 2012  
Invoice# 860429

*For professional services and disbursements from April 1, 2012 through April 30, 2012.*

**Re: Deep9 Corporation v. Barnes & Noble, Inc. and Barnesandnoble.com, Civil Action No. 2:11-cv-00035, W.D. WA (Seattle) [6]**

## Services



Tel. 212-425-7200

KENYON & KENYON LLP

One Broadway  
New York, N.Y. 10004

## **Attorney / Paralegal Summary**

| <u>Activity / Work Done</u> | <u>Hours</u> | <u>Hourly Rate</u> | <u>Total</u> |
|-----------------------------|--------------|--------------------|--------------|
| [REDACTED]                  | [REDACTED]   | [REDACTED]         | [REDACTED]   |
| [REDACTED]                  | [REDACTED]   | [REDACTED]         | [REDACTED]   |
| [REDACTED]                  | [REDACTED]   | [REDACTED]         | [REDACTED]   |
| [REDACTED]                  | [REDACTED]   | [REDACTED]         | [REDACTED]   |
| [REDACTED]                  | [REDACTED]   | [REDACTED]         | [REDACTED]   |
| <b>Services This Matter</b> |              |                    |              |

## **Disbursements**

|                                                                                                                   |           |
|-------------------------------------------------------------------------------------------------------------------|-----------|
| Photocopies                                                                                                       | 4,540.60  |
| Federal Express                                                                                                   | 207.92    |
| Library - Lexis                                                                                                   | 206.44    |
| Outside Reproduction                                                                                              | 77.03     |
| Processing Native                                                                                                 | 2,470.00  |
| Travel Expense - Airfare                                                                                          | 3,040.00  |
| Travel Expense - Car Fare (Parking, Mileage, etc.)                                                                | 240.51    |
| Travel Expense - Car Rental                                                                                       | 563.68    |
| Travel Expense - Lodging                                                                                          | 3,137.12  |
| Travel Expense - Meals                                                                                            | 447.51    |
| VENDOR: Barkley Court Reporters; INVOICE#: 424793; DATE: 4/23/2012 - DEPOSITION OF SUDEEP NARAIN                  | 1,489.40  |
| VENDOR: Barkley Court Reporters; INVOICE#: 425330; DATE: 4/26/2012 - DEPOSITION OF RAVI GOPALAKRISHNAN            | 1,304.00  |
| VENDOR: MercuryIQ; INVOICE#: 00216; DATE: 3/31/12 - Document production                                           | 40,119.57 |
| VENDOR: TransPerfect Document Management, Inc.; INVOICE#: B&NV MICROSOFT/2-2; DATE: 2/29/12 - Document production | 2,626.63  |

## **Disbursements This Matter**

### Total This Matter

## **Historical Matter Summary**

|           | Calendar       | Matter          |
|-----------|----------------|-----------------|
| This Bill | Year To Date * | Total To Date * |

\* Inclusive of This Bill

### **Fees:**



Tel. 212-425-7200

**KENYON & KENYON LLP**One Broadway  
New York, N.Y. 10004**Historical Matter Summary**

| <u>This Bill</u>      | <u>Calendar</u> | <u>Matter</u>          |
|-----------------------|-----------------|------------------------|
| <u>Year To Date *</u> |                 | <u>Total To Date *</u> |

Disbursements:  
Total:

Total This Invoice  
Courtesy Discount  
Total Amount Due



**Kenyon & Kenyon LLP**  
ONE BROADWAY  
NEW YORK, N.Y. 10004  
Tel. 212-425-7200  
I.D. 13-5607139

*URGENT MAY 30 2012*

May 18, 2012

Barnes & Noble, Inc.  
122 Fifth Avenue  
New York, NY 10011

Attn: General Counsel

For professional services and disbursements from April 1, 2012 through April 30, 2012

| Bill Num   | Matter | Matter Name                              | Total      |
|------------|--------|------------------------------------------|------------|
| [REDACTED] |        |                                          |            |
| [REDACTED] | 6      | Deep9 Corporation v. Barnes & Noble, Inc | [REDACTED] |
|            |        |                                          |            |
|            |        |                                          | [REDACTED] |



RECEIVED  
JUL 02 2012  
Kenyon & Kenyon LLP  
ONE BROADWAY  
NEW YORK, N.Y. 10004  
Tel. 212-425-7200  
I.D. 13-5607139

URGENT JUL 19 2012

June 27, 2012

Barnes & Noble, Inc.  
122 Fifth Avenue  
New York, NY 10011

Attn: General Counsel

For professional services and disbursements from May 1, 2012 through May 31, 2012

| Bill Num   | Matter     | Matter Name                              | Total      |
|------------|------------|------------------------------------------|------------|
| [REDACTED] | [REDACTED] | Deep9 Corporation v. Barnes & Noble, Inc | [REDACTED] |
|            |            |                                          |            |
|            |            |                                          | [REDACTED] |

**Kenyon & Kenyon LLP**  
ONE BROADWAY  
NEW YORK, N.Y. 10004  
Tel. 212-425-7200  
I.D. 13-5607139

---

Barnes & Noble, Inc.  
122 Fifth Avenue  
New York, NY 10011

June 27, 2012

Invoice # 861689

Attn: General Counsel

For professional services and disbursements from May 1, 2012 through May 31, 2012.

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Total This Invoice [REDACTED]

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[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Barnes & Noble, Inc.  
122 Fifth Avenue  
New York, NY 10011

Attn: General Counsel

**KENYON & KENYON LLP**  
One Broadway  
New York, N.Y. 10004  
I.D. 13-5607139

June 27, 2012  
Invoice# 861689

For professional services and disbursements from May 1, 2012 through May 31, 2012.

**Re: Deep9 Corporation v. Barnes & Noble, Inc. and Barnesandnoble.com, Civil Action No. 2:11-cv-00035, W.D. WA (Seattle) [6]**

The image consists of a grid of 12 rows and 3 columns of black rectangular bars. The bars are arranged in a staggered pattern. The first row has one bar. The second row has two bars. The third row has three bars. This pattern continues until the twelfth row, which has three bars. The bars are solid black and have a slight texture or noise. They are set against a plain white background.



## **Attorney / Paralegal Summary**

## Disbursements

|                                                                            |          |
|----------------------------------------------------------------------------|----------|
| Photocopies                                                                | 426.25   |
| Electronic Document Processing - Branding                                  | 1,114.64 |
| Federal Express                                                            | 160.13   |
| Library - Lexis                                                            | 624.17   |
| Library - Westlaw                                                          | 3,829.37 |
| Local Meals (Non Travel Related)                                           | 612.14   |
| Outside Reproduction                                                       | 458.38   |
| Processing Native                                                          | 282.50   |
| Processing TIFFS (Including TIFFing and Extracting Metadata and Full Text) | 2,229.28 |
| Travel Expense - Airfare                                                   | 1,699.60 |
| Travel Expense - Car Fare (Parking, Mileage, etc.)                         | 22.00    |
| Travel Expense - Car Rental                                                | 326.50   |
| Travel Expense - Lodging                                                   | 514.46   |
| Travel Expense - Meals                                                     | 66.29    |
|                                                                            | (374.67) |



Tel. 212-425-7200

**KENYON & KENYON LLP**One Broadway  
New York, N.Y. 10004

|                                                                                                                |          |
|----------------------------------------------------------------------------------------------------------------|----------|
| VENDOR: Aptus Court Reporting; INVOICE#: 1001980; DATE: 5/18/2012 - DEPOSITION OF R. DAVID L. CAMPBELL         | 4,942.88 |
| VENDOR: Aptus Court Reporting; INVOICE#: 1001982; DATE: 5/18/2012 - DEPOSITION OF R. DAVID L. CAMPBELL         | 2,029.53 |
| VENDOR: Barkley Court Reporters; INVOICE#: 425623; DATE: 5/1/2012 - DEPOSITION OF SUDEEP NARAIN                | 75.00    |
| VENDOR: Barkley Court Reporters; INVOICE#: 425622; DATE: 5/1/2012 - DEPOSITION OF RAVI GOPALAKRISHNAN          | 75.00    |
| VENDOR: Greenhouse Reporting, Inc.; INVOICE#: 23648-2; DATE: 5/17/2012 - DEPOSITION OF CHRIS WINBERRY, 4/26/12 | 628.04   |
| VENDOR: Greenhouse Reporting, Inc.; INVOICE#: 23647-2; DATE: 5/17/2012 - DEPOSITION OF CHRIS WINBERRY, 4/26/12 | 1,109.33 |

**Disbursements This Matter****Total This Matter****Historical Matter Summary**

| <u>This Bill</u> | <u>Calendar Year To Date *</u> | <u>Matter Total To Date *</u> |
|------------------|--------------------------------|-------------------------------|
|------------------|--------------------------------|-------------------------------|

Fees:

Disbursements:

Total:

**Total This Invoice**  
**Courtesy Discount**  
**Total Amount Due**



URGENT SEP 13 2012

Kenyon & Kenyon LLP  
ONE BROADWAY  
NEW YORK, N.Y. 10004  
Tel. 212-425-7200  
I.D. 13-5607139

Barnes & Noble, Inc.  
122 Fifth Avenue  
New York, NY 10011

RECEIVED

July 25, 2012

JUL 27 2012

Attn: General Counsel

For professional services and disbursements from June 1, 2012 through June 30, 2012

| Bill Num   | Matter | Matter Name                              | Total      |
|------------|--------|------------------------------------------|------------|
| [REDACTED] | 6      | Deep9 Corporation v. Barnes & Noble, Inc | [REDACTED] |
|            |        |                                          | [REDACTED] |
|            |        |                                          | [REDACTED] |

**Kenyon & Kenyon LLP**  
ONE BROADWAY  
NEW YORK, N.Y. 10004  
Tel. 212-425-7200  
I.D. 13-5607139

---

Barnes & Noble, Inc.  
122 Fifth Avenue  
New York, NY 10011

July 24, 2012

Invoice # 865996

Attn: General Counsel

For professional services and disbursements from June 1, 2012 through June 30, 2012.

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**Total This Invoice** [REDACTED]

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Make Checks Payable to: Kenyon & Kenyon LLP

Or

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Tel. 212-425-7200

**KENYON & KENYON LLP**

One Broadway  
New York, N.Y. 10004

The image consists of a 10x3 grid of black rectangular bars. The bars are arranged in three columns. The first column contains 10 bars of varying widths. The second column contains 9 bars of varying widths. The third column contains 8 bars of varying widths. All bars are black and have a thin white border.

**Attorney / Paralegal Summary**

Partner

### Hours

### **Hourly Rate**

Total

37



Tel. 212-425-7200

**KENYON & KENYON LLP**One Broadway  
New York, N.Y. 10004**Attorney / Paralegal Summary**

|                             | <u>Hours</u> | <u>Hourly Rate</u> | <u>Total</u> |
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| <u>Legal Intern</u>         |              |                    |              |
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| [REDACTED]                  | [REDACTED]   | [REDACTED]         | [REDACTED]   |
| [REDACTED]                  | [REDACTED]   | [REDACTED]         | [REDACTED]   |
| [REDACTED]                  | [REDACTED]   | [REDACTED]         | [REDACTED]   |
| [REDACTED]                  | [REDACTED]   | [REDACTED]         | [REDACTED]   |
| [REDACTED]                  | [REDACTED]   | [REDACTED]         | [REDACTED]   |
| <b>Services This Matter</b> |              |                    | [REDACTED]   |

**Disbursements**

|                                                                                                       |            |
|-------------------------------------------------------------------------------------------------------|------------|
| Color Copies                                                                                          | 408.40     |
| Electronic Document Processing - Branding                                                             | 36.67      |
| Federal Express                                                                                       | 132.72     |
| Library - Lexis                                                                                       | 1,281.98   |
| Library - Other Expense                                                                               | 66.20      |
| Library - Patent Imaging Corporation (DA)                                                             | 1,634.33   |
| Library - Westlaw                                                                                     | 1,439.45   |
| Photocopies                                                                                           | 4,665.21   |
| Processing Native                                                                                     | 1,028.00   |
| Processing TIFFS (Including TIFFing and Extracting Metadata and Full Text)                            | 73.34      |
| Travel Expense - Airfare                                                                              | 3,299.60   |
| Travel Expense - Lodging                                                                              | 514.46     |
| [REDACTED]                                                                                            | [REDACTED] |
| [REDACTED]                                                                                            | [REDACTED] |
| VENDOR: Barkley Court Reporters; Invoice # -426851; DATE: 5/23/2012 - Deposition of Ranju Das.        | 1,934.64   |
| VENDOR: Greenhouse Reporting, Inc.; Invoice#: 23671-3; DATE: 6/4/2012 - Deposition of John McDermott  | 2,057.30   |
| VENDOR: Greenhouse Reporting, Inc.; Invoice#: 23672-3; DATE: 6/4/2012 - Deposition of John McDermott. | 708.98     |
| <b>Disbursements This Matter</b>                                                                      | [REDACTED] |



Tel. 212-425-7200

KENYON & KENYON LLP

One Broadway  
New York, N.Y. 10004

Total This Matter [REDACTED]

Historical Matter Summary

|                | This Bill  | Calendar<br><u>Year To Date *</u> | Matter<br><u>Total To Date *</u> |
|----------------|------------|-----------------------------------|----------------------------------|
| Fees:          | [REDACTED] | [REDACTED]                        | [REDACTED]                       |
| Disbursements: | [REDACTED] | [REDACTED]                        | [REDACTED]                       |
| Total:         |            |                                   |                                  |

Total This Invoice  
Courtesy Discount  
Total Amount Due  
[REDACTED]



**Kenyon & Kenyon LLP**  
ONE BROADWAY  
NEW YORK, N.Y. 10004  
Tel. 212-425-7200  
I.D. 13-5607139

---

August 29, 2012

Barnes & Noble, Inc.  
122 Fifth Avenue  
New York, NY 10011

Attn: General Counsel

For professional services and disbursements from July 1, 2012 through July 31, 2012

| Bill Num   | Matter     | Matter Name                              | Total      |
|------------|------------|------------------------------------------|------------|
| [REDACTED] | 6          | Deep9 Corporation v. Barnes & Noble, Inc | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED]                               | [REDACTED] |

Kenyon & Kenyon LLP

ONE BROADWAY  
NEW YORK, N.Y. 10004  
Tel. 212-425-7200  
I.D. 13-5607139

Barnes & Noble, Inc.  
122 Fifth Avenue  
New York, NY 1001

August 29, 2012

Invoice # 869366

Attn: General Counsel

*For professional services and disbursements from July 1 through July 31, 2012*

**Total This Invoice**

Make Checks Payable to: Kenyon & Kenyon LLP

Or

Tel. 212-425-7200

**KENYON & KENYON LLP**One Broadway  
New York, N.Y. 10004**Attorney / Paralegal Summary**

|                             | <u>Hours</u> | <u>Hourly Rate</u> | <u>Total</u> |
|-----------------------------|--------------|--------------------|--------------|
| [REDACTED]                  | [REDACTED]   | [REDACTED]         | [REDACTED]   |
| [REDACTED]                  | [REDACTED]   | [REDACTED]         | [REDACTED]   |
| [REDACTED]                  | [REDACTED]   | [REDACTED]         | [REDACTED]   |
| [REDACTED]                  | [REDACTED]   | [REDACTED]         | [REDACTED]   |
| [REDACTED]                  | [REDACTED]   | [REDACTED]         | [REDACTED]   |
| [REDACTED]                  | [REDACTED]   | [REDACTED]         | [REDACTED]   |
| [REDACTED]                  | [REDACTED]   | [REDACTED]         | [REDACTED]   |
| <b>Services This Matter</b> |              |                    | [REDACTED]   |

**Disbursements**

|                                                                                                                     |            |
|---------------------------------------------------------------------------------------------------------------------|------------|
| Color Copies & Photocopies                                                                                          | 2,800.10   |
| [REDACTED]                                                                                                          | [REDACTED] |
| Telephone & Telephone Conferencing Services                                                                         | 100.75     |
| Travel/Meal Expenses                                                                                                | 6,906.46   |
| Federal Express                                                                                                     | 2,893.48   |
| Outside Reproduction                                                                                                | 121.46     |
| VENDOR: Aptus Court Reporting; INVOICE#: 1002434; DATE: 7/20/2012 - DEPOSITION OF STEPHEN GRAY                      | 6,136.45   |
| VENDOR: Aptus Court Reporting; INVOICE#: 1002353; DATE: 7/20/2012 - DEPOSITION OF RUSSELL W. MANGUM III, Ph.D       | 3,890.36   |
| VENDOR: Greenhouse Reporting, Inc.; INVOICE#: 23752-3; DATE: 7/27/2012 - DEPOSITION OF MARK GALLAGHER, 7/3/12       | 1,143.19   |
| VENDOR: Greenhouse Reporting, Inc.; INVOICE#: 23751-3; DATE: 7/27/2012 - DEPOSITION OF DR BENJAMIN GOLDBERG, 7/6/12 | 782.13     |
| VENDOR: Aptus Court Reporting; INVOICE#: 1002323; DATE: 7/16/12 - Deposition transcript re: David R. Campbell V3    | 1,251.64   |

**Disbursements This Matter**

Tel. 212-425-7200

KENYON & KENYON LLP

One Broadway  
New York, N.Y. 10004

Total This Matter [REDACTED]

Historical Matter Summary

|                  | Calendar              | Matter                 |
|------------------|-----------------------|------------------------|
| <u>This Bill</u> | <u>Year To Date *</u> | <u>Total To Date *</u> |

\* Inclusive of This Bill

Fees:

[REDACTED] [REDACTED] [REDACTED] [REDACTED]

Total This Invoice  
Courtesy Discount  
Total Amount Due [REDACTED]



# **EXHIBIT 3**

( R L M ))

413 S. WASHINGTON STREET \ ALEXANDRIA VA 22314 \ 800.781.3591

September 26, 2012

Jeff Gerchick  
Quinn Emanuel  
1299 Pennsylvania Avenue, N.W.  
Suite 825  
Washington, DC 20004

*Re: Deep9 Corporation v. Barnes & Noble, Inc.*

Dear Jeff,

Please find attached an invoice in the amount of \$4,500.00. This invoice includes billable professional services for the period 09/01/2012 through the 09/30/2012.

If you have any questions, please call me at (202) 341-5444.

Best regards,



Guy Joubert  
Principal

**Invoice Remittance**

Jeff Gerchick  
Quinn Emanuel  
1299 Pennsylvania Avenue, N.W.  
Suite 825  
Washington, DC 20004

September 26, 2012  
Resonant Invoice No. 1209-019  
Terms NET 30  
Federal ID No. 20-4734326

*Re: Deep9 Corporation v. Barnes & Noble, Inc.*

Current Invoice Period: 09/01/2012 - 09/30/2012

|                              |                   |
|------------------------------|-------------------|
| <b>Professional Services</b> | <b>\$4,500.00</b> |
| <b>Total Amount Due</b>      | <b>\$4,500.00</b> |

**Please Remit Payment to:**

Resonant Legal Media, LLC  
413 S. Washington Street  
Alexandria VA 22314

( resonant | legal media ))

From

**RLM**413 S. Washington Street  
Alexandria, Virginia 22314  
United States

|                |                                                  |             |                                              |
|----------------|--------------------------------------------------|-------------|----------------------------------------------|
| Invoice Number | <b>1209-019</b>                                  | Invoice For | <b>Quinn Emanuel Urquhart &amp; Sullivan</b> |
| Invoice Date   | 09/26/2012                                       |             |                                              |
| Due Date       | 10/26/2012 (Net 30)                              |             |                                              |
| Matter         | Deep9 Corporation v. Barnes & Noble Inc., et al. |             |                                              |

| Type              | Description                                                                                          | Hours | Hourly Rate | Amount            |
|-------------------|------------------------------------------------------------------------------------------------------|-------|-------------|-------------------|
| Professional Fees | Deep9 Corporation v. Barnes & Noble Inc., et al. - 09/09/2012 - Communication Design / Annett Schuze | 2.00  | \$225.00    | <b>\$450.00</b>   |
| Professional Fees | Deep9 Corporation v. Barnes & Noble Inc., et al. - 09/10/2012 - Communication Design / Annett Schuze | 13.00 | \$225.00    | <b>\$2,925.00</b> |
| Professional Fees | Deep9 Corporation v. Barnes & Noble Inc., et al. - 09/11/2012 - Communication Design / Annett Schuze | 5.00  | \$225.00    | <b>\$1,125.00</b> |

**Amount Due      \$4,500.00**

# **EXHIBIT 4**

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON

INVOICE NO: 00000527

## MAKE CHECKS PAYABLE TO:

Charles Basinger  
 Quinn Emanuel Urquhart & Sullivan  
 1299 Pennsylvania Ave. NW  
 Suite 825  
 Washington, DC  
 Phone:

Kari McGrath, RMR, CRR  
 United States Court Reporter  
 U.S. Courthouse  
 700 Stewart Street, Suite 17205  
 Seattle, WA 98101  
 Phone: (206) 370-8509  
 Tax ID: 27-0257329  
 kari\_mcgrath@wawd.uscourts.gov

CRIMINAL

CIVIL

DATE ORDERED:

09-13-2012

DATE DELIVERED:

09-13-2012

Case Style: C11-35JLR, Deep9 Corporation v Barnes &amp; Noble, et al.

Oral Argument held on 9-11-12

| CATEGORY    | ORIGINAL                         |       |          | 1ST COPY |       |          | 2ND COPY |       |          | TOTAL CHARGES |
|-------------|----------------------------------|-------|----------|----------|-------|----------|----------|-------|----------|---------------|
|             | PAGES                            | PRICE | SUBTOTAL | PAGES    | PRICE | SUBTOTAL | PAGES    | PRICE | SUBTOTAL |               |
| Ordinary    |                                  |       |          |          |       |          |          |       |          |               |
| 14-Day      |                                  |       |          |          |       |          |          |       |          |               |
| Expedited   |                                  |       |          |          |       |          |          |       |          |               |
| Daily       |                                  |       |          |          |       |          |          |       |          |               |
| Hourly      | 37                               | 7.25  | 268.25   |          |       |          |          |       |          | 268.25        |
| Realtime    |                                  |       |          |          |       |          |          |       |          |               |
| Misc. Desc. | MISC. CHARGES:                   |       |          |          |       |          |          |       |          |               |
|             | TOTAL:                           |       |          |          |       |          |          |       |          | 268.25        |
|             | LESS DISCOUNT FOR LATE DELIVERY: |       |          |          |       |          |          |       |          |               |
|             | TAX (If Applicable):             |       |          |          |       |          |          |       |          |               |
|             | LESS AMOUNT OF DEPOSIT:          |       |          |          |       |          |          |       |          |               |
|             | TOTAL REFUND:                    |       |          |          |       |          |          |       |          |               |
|             | TOTAL DUE:                       |       |          |          |       |          |          |       |          | \$268.25      |

## ADDITIONAL INFORMATION

Full price may be charged only if the transcript is delivered within the required time frame. For example, if an order for expedited transcript is not completed and delivered within seven (7) calendar days, payment would be at the ordinary delivery rate.

## CERTIFICATION

I certify that the transcript fees charged and page format used comply with the requirements of this court and the Judicial Conference of the United States.

SIGNATURE:

DATE

09-24-2012